

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

MASS ENGINEERED DESIGN, INC.)
DOCKET NO. 6:14cv411
-vs-)
Tyler, Texas
SPACECO BUSINESS SOLUTIONS,) 2:30 p.m.
INC.) November 5, 2014

MASS ENGINEERED DESIGN, INC.)
DOCKET NO. 6:14cv412
-vs-)
ERGOTECH GROUP, INC.)

MASS ENGINEERED DESIGN, INC.)
DOCKET NO. 6:14cv413
-vs-)
ISE, INC., ET AL)

MASS ENGINEERED DESIGN, INC.)
DOCKET NO. 6:14cv414
-vs-)
PLANAR SYSTEMS, INC.)

MASS ENGINEERED DESIGN, INC.)
DOCKET NO. 6:14cv431
-vs-)
HERMAN MILLER, INC.)

TRANSCRIPT OF SCHEDULING CONFERENCE
BEFORE THE HONORABLE LEONARD DAVIS,
UNITED STATES CHIEF DISTRICT JUDGE

A P P E A R A N C E S

(SEE SIGN-IN SHEETS DOCKETED IN THE MINUTES OF THE HEARING.)

SPEAKERS

FOR THE PLAINTIFFS:

MR. ANDREW SPANGLER
MR. JOHN EDMONDS
MR. STEVE SCHLATHER

FOR THE DEFENDANTS:

MR. SCOTT STEVENS
MR. TODD BRANDT
MR. GLENN THAMES
MS. ANNA PHILLIPS
MR. GIL GILLAM

COURT REPORTER: MS. SHEA SLOAN
 shea_sloan@txed.uscourts.gov

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1 P R O C E E D I N G S

2 THE COURT: Please be seated.

3 All right. Ms. Ferguson, if you will call the
4 case.

5 THE CLERK: Court calls Cases Nos. 6:14cv411,
6 6:14cv412, 6:14cv413, 6:14cv414, 6:14cv431, Mass Engineered
7 v. SpaceCo Business Solutions, et al.

8 THE COURT: Okay. Announcements.

9 MR. SPANGLER: Good afternoon, Your Honor. Andrew
10 Spangler on behalf of the plaintiff. With me today is Mr.
11 Shea Palavan, John Edmonds, Steve Schlather. And we are
12 ready to proceed.

13 THE COURT: Okay. Thank you.

14 MR. GILLAM: Good afternoon, Your Honor, Gil Gillam
15 on behalf of Herman Miller; and that is in the 431 case
16 originally. We are ready to go.

17 THE COURT: Okay. Thank you.

18 MR. STEVENS: Good afternoon, Your Honor, Scott
19 Stevens here for SpaceCo; and Todd Brandt is with me as well,
20 Your Honor.

21 THE COURT: Okay. Thank you.

22 MR. THAMES: Good afternoon, Your Honor. Glenn
23 Thames for Planar Systems.

24 THE COURT: Okay.

25 MS. PHILLIPS: Hello, Your Honor. Anna Phillips

1 for the ErgoTech Group in the 412 case and ISE, Inc., in the
2 413 case.

3 THE COURT: Okay. Thank you.

4 All right. We are here for the scheduling
5 conference. Why don't -- let me just hear a brief opening
6 statement by both sides, just sort of what the case is about
7 and what you would like to see happen here today.

8 MR. SCHLATHER: Good afternoon, Your Honor, Steve
9 Schlather for the plaintiffs.

10 As the Court may recall, this Court has tried a
11 case for Mass Engineered Design previously.

12 THE COURT: I thought that sounded very familiar.
13 That was in Marshall, right?

14 MR. SCHLATHER: It was.

15 THE COURT: How long ago was that?

16 MR. SCHLATHER: It was probably six years ago now.
17 I think it was in 2008 was the trial.

18 THE COURT: And what was the outcome? I don't
19 recall.

20 MR. SCHLATHER: Finding of infringement and
21 validity for the plaintiff.

22 THE COURT: Okay.

23 MR. SCHLATHER: The technology relates to computer
24 monitor stands, multi-monitor stands.

25 THE COURT: Right. What were the damages in that

1 case?

2 MR. SCHLATHER: I don't recall off the top of my
3 head, Your Honor.

4 THE COURT: Y'all weren't involved in that?

5 MR. SCHLATHER: No.

6 THE COURT: Okay. All right. Go ahead.

7 MR. SCHLATHER: So as I said, the case involves
8 relatively simple technology. It is multi-monitor computer
9 stands. As we said in the joint notice, the technology of
10 all of the accused products is similar, in that it generally
11 has the same types of components to hold these screens.

12 So as far as, you know, moving all of the cases
13 forward together, I think from our standpoint it makes sense
14 to consolidate the cases and move them forward together at
15 least through pretrial.

16 THE COURT: There is no disagreement from the
17 defendants on consolidating for pretrial purposes, right?

18 MR. GILLAM: No, Your Honor, there is not.

19 THE COURT: Okay.

20 MR. SCHLATHER: And, in fact, we have spoken with
21 Human Scale, Planar, and SpaceCo and have agreed to -- yeah,
22 Human Scale, Planar, and SpaceCo, and have agreed to use the
23 Track B schedule with a couple of slight modifications to put
24 in hard dates for initial disclosures and for invalidity
25 contentions.

1 THE COURT: Okay. And that -- who have you agreed
2 to do Track B with?

3 MR. SCHLATHER: Excuse me. It was Herman Miller,
4 Planar, and SpaceCo, Your Honor. I'm sorry.

5 THE COURT: Okay. All right. Then what about Ergo
6 and ISE?

7 MR. SCHLATHER: We are -- I believe we are waiting
8 on them to hear back from them on whether they are agreeable
9 to Track B.

10 THE COURT: Okay. All right. Okay. Thank you.
11 Defendants?

12 MR. GILLAM: Your Honor, Gil Gillam, again, on
13 behalf of Herman Miller. That is correct, Your Honor,
14 SpaceCo, Planar, and Herman Miller have agreed to Track B in
15 this case.

16 The modifications which we would ask the Court for
17 is under the Management Order No. 2, the initial disclosures
18 and summary sales information. We would like a hard date of
19 December 15th for the providing of that information. And
20 then the only other modification we would ask for, Your
21 Honor, is No. 4. That is invalidity contentions. We have
22 agreed with the plaintiff that those would be due on January
23 the 15th.

24 THE COURT: Okay.

25 MR. GILLAM: But other than that, we have agreed to

1 go Track B.

2 THE COURT: All right. That is approved if both
3 sides agree to that.

4 And what do you think Track B will do for you in
5 this case? Do you think it will be helpful to you or not
6 helpful to you?

7 MR. GILLAM: Your Honor, in all --

8 THE COURT: I know initially you had opposed it, I
9 think.

10 MR. GILLAM: In all frankness, Your Honor, our
11 discussions amongst all of us and with our clients have been
12 to oppose it, to begin with. And then we took a look at it
13 today as we sat down for about an hour beforehand and
14 thought, well, in this particular case it makes some sense
15 because there is some flexibility involved in setting of
16 future schedules and things such as that. I think in this
17 particular case it is probably okay.

18 There is a concern, I will tell you, on behalf of
19 defendants generally, I think, with Track B simply because it
20 is still sort of an unknown -- it is an unknown quantity. I
21 think defendants typically are used to patent cases
22 proceeding the way patent cases have proceeded here. And so
23 there is a familiarity with that that is not there with Track
24 B yet.

25 But in this case given what we know about it, we

1 think it is okay.

2 THE COURT: Well, we are just experimenting with
3 it, so I appreciate that feedback; and we are trying to -- if
4 we need to tweak it some -- again, on all these Track A's and
5 B's I'm not married to any of them. I'm just trying to give
6 some food for thought for both sides to put their heads
7 together and see if there is a -- if it makes sense, if it is
8 less expensive, if it might help you get to resolution of
9 your case earlier.

10 And actually, I mean, Track B evolved out of
11 concern I heard mainly expressed by in-house counsel for
12 defendants wanting to be able to get a handle on their case
13 earlier, know what is involved, you know, and get it --
14 rather than having to -- looking at a big discovery bill and
15 expense way down the road until they ever find out really
16 what they are being sued for or for how much is really
17 involved. So --

18 MR. GILLAM: Certainly.

19 THE COURT: Anyway, I hope you will give me any
20 other feedback you have, either formally or informally. I
21 would appreciate it.

22 MR. GILLAM: Yes, sir. Certainly will, Your
23 Honor.

24 THE COURT: All right. What about ISE and
25 ErgoTech?

1 MS. PHILLIPS: Yes, Your Honor. We were made aware
2 of the agreement between the other defendants and the
3 plaintiff about a half an hour before the conference. As you
4 know, we have agreed to settle in principal, but I have a
5 call in to the partner about the change in this Track B
6 schedule, and I am still waiting to hear back.

7 THE COURT: Okay.

8 So let me ask both Counsel for plaintiff and
9 defendant in the ErgoTech and ISE, has it been settled in
10 principal? Has anything been reduced to writing? Or what
11 does that mean?

12 MR. SCHLATHER: I believe it has been settled in
13 principal. We have exchanged drafts. Both sides have
14 exchanged drafts of settlement agreements, and I expect that
15 we will be able to resolve any differences that remain
16 relatively quickly.

17 THE COURT: Okay. All right.

18 Well, just since we are all here and just for sake
19 of consistency, I am going to go ahead and assign it to Track
20 B just as the other three cases, but hopefully you will get
21 that -- get the case resolved before you ever have to enter a
22 docket control order.

23 If you don't and if after visiting further on this,
24 I will certainly entertain a motion to modify that from
25 defendants if for some reason Track B doesn't make sense.

1 MS. PHILLIPS: Thank you, Your Honor.

2 THE COURT: Okay. Thank you.

3 All right. Very well. Anything further from the
4 parties on these cases?

5 MR. STEVENS: Your Honor, Scott Stevens for
6 SpaceCo.

7 THE COURT: Yes, Mr. Stevens.

8 MR. STEVENS: I just would like to point out to the
9 Court that our client has filed an IPR, and we filed a motion
10 to stay, so SpaceCo's agreement to this is subject to our
11 motion to stay.

12 THE COURT: Understood, understood. And we will
13 look at that as we are able to as we proceed.

14 MR. STEVENS: Thank you.

15 MR. THAMES: Your Honor, Glenn Thames. With the
16 same caveat to my client to make with regard to a motion to
17 transfer venue that we have on file.

18 THE COURT: Understood. Okay. Very well.

19 Anything further?

20 MR. EDMONDS: Just briefly. You had asked the
21 defendants kind of what they were looking for from Track B,
22 so I thought, well fair enough, if we could express --

23 THE COURT: Yeah, sure.

24 MR. EDMONDS: -- what we are looking for as well.

25 THE COURT: I appreciate that.

1 MR. EDMONDS: This is somewhat of a unique case
2 before the Court in that you have construed the terms of the
3 '978 patent, which is one of the three patents. Most of the
4 defendants just have two patents-in-suit. The '978 goes
5 across all of them.

6 The other two patents have already been litigated
7 in the Eastern District of Virginia. There is a claim
8 construction order covering them. Almost all of those terms
9 were ordinary meaning.

10 So this is a case where we hope to get this Court,
11 to the extent it is going to readdress Markman, to do it
12 sooner instead of later so that everybody knows whether we
13 still kind of stand where we did before.

14 And in terms of, you know, kind of in-house counsel
15 liking to know -- everybody wants to know where we stand
16 early, this case from our perspective gives a good
17 opportunity to do that because much of the work has already
18 been done, including by this Court.

19 THE COURT: Okay. So when would you be ready for a
20 Markman Hearing?

21 MR. EDMONDS: Speaking for the plaintiff, we would
22 be ready at any time. I mean, the terms that have already
23 been construed either by this Court or by the Eastern
24 District of Virginia, I think, run the gamut. I mean, as
25 defendants typically do, they -- there is a lot in there,

1 so -- and, you know, even if it is a special procedure in the
2 sense somebody thinks this Court's claim constructions were
3 incorrect, to start by saying why they are incorrect.

4 I have had that in a case with you years ago where
5 you had already construed them, and I think you said we are
6 going to start off by briefing why my other claim
7 construction order was incorrect. We will start off there.

8 But, you know, just thinking kind of outside the
9 box of ways to streamline it, you know, if the Court does
10 Markman earlier instead of later, then everybody should know
11 where they stand. And, like I said, a lot of legwork has
12 already been done by the Court.

13 THE COURT: Okay. What is defendants' position on
14 that?

15 MR. THAMES: Your Honor, Glenn Thames for Planar
16 Systems. I think at this stage we don't have enough
17 information to really address that. I would say that this
18 is, I believe, what Track B is sort of designed to do at the
19 second case management conference when we get to that point,
20 which is after we trade these initial disclosures and find
21 out exactly what we are dealing with here and then at that
22 time we can come up with a custom tailored schedule to fit
23 the case as the case may be.

24 It sounds like the plaintiff would have -- is going
25 to have some arguments at that time that a quicker than

1 normal schedule is appropriate, given the past claim
2 constructions. But standing here today I don't have enough
3 information to be able to tell Your Honor that that is really
4 going to save us a lot of time or work.

5 THE COURT: Okay. Well, I was going to go ahead
6 and give you some dates. I had in mind April 23rd, 2015, for
7 your Markman Hearing.

8 Would plaintiff like to see it sooner than that if
9 we could do it, or does that sound reasonable?

10 MR. EDMONDS: It certainly sounds reasonable. We
11 would be happy to do it sooner. It seems like we are going
12 to have their -- they already have our infringement
13 contentions. We did them along the normal time frame. We
14 are going to have their validity contentions in January. It
15 seems like at that point both sides should kind of know where
16 the battle lines are drawn, so we would encourage it,
17 frankly, earlier if the Court could accommodate it.

18 THE COURT: Okay.

19 MR. GILLAM: Well, certainly, Your Honor, echoing
20 what Mr. Thames said, we simply do not know at this point
21 where we stand on this. This case, insofar as Herman Miller
22 is concerned -- actually Herman Miller with respect to the
23 '978 patent in this case was sued some five years, and then
24 it went through a series of things and was eventually
25 dismissed by the plaintiff.

1 So we would certainly not want it any earlier than
2 April 23, 2015, but would at least like to have the
3 opportunity to consult with our clients with respect to that
4 and, perhaps, consult, obviously, with the plaintiffs under
5 the terms of Track B as well and see what might be an
6 appropriate time for the Markman.

7 THE COURT: Okay. So both of you then anticipate
8 then coming back for a management conference at some point
9 after the invalidity contentions have been served; is that
10 correct?

11 MR. GILLAM: Yes, Your Honor, that is correct.

12 THE COURT: All right. Well, we will proceed in
13 that fashion, and we will wait to hear from you on that.
14 Just for -- I do want to keep the case moving. The dates --
15 I am not setting if for this, but the dates I have available
16 that I was considering unless we come up with something more
17 novel was an April 23rd, 2015, Markman Hearing. Just keep
18 that in mind and we can talk about that further at our
19 management conference.

20 MR. THAMES: Your Honor, just real briefly, I tried
21 to do some quick calculations on the typical Track B
22 schedule, and it looks like that following that, that our 4-3
23 would just be getting done in March, so that doesn't leave us
24 very much of a window for briefing following the 4-3
25 statement. So just something to think about, Your Honor.

1 THE COURT: Okay.

2 MR. EDMONDS: Your Honor, we certainly -- I mean
3 the 4-3's and 4-2's can all be -- I think if we have a
4 Markman date, all of those other dates can be adjusted fairly
5 easily.

6 What I would request, and maybe it is asking too
7 much, but if you could -- if you could pencil us in for that
8 date, and then -- and I understand the defendants don't want
9 to commit to it; but at least the opportunity would be there
10 when we come back and see you as opposed to that date filling
11 back up because it does seem like a reasonable date.

12 THE COURT: Okay. I am going to go ahead and give
13 you these dates and we'll go ahead and set them for these
14 dates but subject to modification at our management
15 conference if either side wants to move forward.

16 So Markman on April 23rd, case is set for jury
17 selection and trial on April 4th of 2016. That would be jury
18 selection and trial either starting on the 4th or the 11th.
19 Pretrial will be on March 24th of 2016. So you can work
20 those into your plans and your discussions and then we can
21 discuss it when we get to that point.

22 Okay. Anything further?

23 MS. PHILLIPS: Your Honor -- I'm sorry -- I just
24 heard back, ISE and ErgoTech agree to the Track B schedule.

25 THE COURT: Very good. Okay. Thank you.

1 Everybody is on Track B then.

2 All right. We will be adjourned. Thank you.

3 (Hearing adjourned.)

4

5

6 CERTIFICATION

7

8 I HEREBY CERTIFY that the foregoing is a true
9 and correct transcript from the stenographic notes of the
10 proceedings in the above-entitled matter to the best of my
11 ability.

12

13 /s/ Shea Sloan
14 SHEA SLOAN, CSR, RPR
15 Official Court Reporter
16 State of Texas No.: 3081
17 Expiration Date: 12/31/14

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